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**LABOUR & E. S. I. DEPARTMENT**

**NOTIFICATION**

**The 18th April 2012**

No. 3042—li/1(J)-98/1998(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 7th February 2012 in Industrial Dispute Case No. 9/1999 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of BILT., Unit Sewa Jeypore, Dist. Koraput and their Workman Shri Prabhat Kumar Das was referred to for adjudication is hereby published as in the Schedule below :

**SCHEDULE**

**IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR**

**INDUSTRIAL DISPUTE CASE No. 9 OF 1999**

**Dated the 7th February 2012**

**Present :**

Raghubir Dash, o.s.J.s. (Sr. Branch),  
Presiding Officer,  
Industrial Tribunal,  
Bhubaneswar.

**Between :**

The Management of  
M/s Ballarpur Industries Ltd.,  
Unit-Sewa, Gangpur,  
Jeypore, Dist. Koraput.

.. First-party—Management

**And**

Its Workman  
Shri Prabhat Kumar Das,  
C/o Shri Prasanta Kumar Das,  
Tikrasahi, Koraput.

.. Second-party—Workman



## Appearances :

Shri Sanjay Mishra, Advocate	.. For the First-party—Management
Shri Susanta Kumar Dash, Advocate	.. For the Second-party—Workman

## AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') made by the Government of Odisha in the Labour & Employment Department vide their Order No. 4324—II/1(J)-98/1998-LE., dated the 30th March 1999. The Schedule of reference runs as follows :

"Whether the action of management of Ballarpur Industries Ltd., by way of non-reinstatement to Shri Prabhat Kumar Das, Accounts Assistant of Sewa Paper Mill with effect from the 1st November 1987 in pursuance of amalgamation/merger Scheme-cum-Award passed by B.I.F.R. on 20-1-1991 is legal or justified ? If not, to what relief Shri Das is entitled ?"

2. From the pleadings of the parties and evidence on record the following facts are found to be not in dispute :—

The second-party was working as an Accounts Assistant in the establishment of Sewa Paper Mills Ltd., Jeypore. That Mill became sick and was closed down on 31-10-1987. It was taken over by the present first-party/management as per the B.I.F.R. Award, dated the 20th June 1991. A Memorandum of Understanding (MoU) between the representatives of the workmen of the Mill and that of the present management which was signed on 9-8-1990 got incorporated in the B.I.F.R. Award. In terms of the Award the new management was to offer employment to all the willing permanent employees of the Mill in a phased manner depending on the requirement of the new management but within a stipulated period of ten months starting from 20-6-1991, the date of reopening of the Mill. Accordingly, there was a newspaper publication made on 8-9-1990 inviting willing workmen to apply within twenty days of the publication. In response to that publication the second-party sent an application expressing his willingness to be absorbed under the first-party.

The second-party claims that on his application stating his willingness to join with the first-party, he was intimidated by a telegram that he should join in the Mill by 5-1-1993. Since that telegram was received on 4-1-1993 there was no sufficient time for joining within the stipulated date. Therefore, the second-party sent a telegram on 5-1-1993 requesting the management for extension of time which was turned down by the management vide its telegram, dated the 8th January 1993. However, subsequently the second-party received a letter from the first-party on 14-1-1993 in which he was directed to join by 15-1-1993. As there was no sufficient time to join the second-party again prayed for extension of time but the management refused. However, the second-party kept on sending applications to the first-party from time to time starting from 17-6-1993 to 2-8-1997 but the management did not respond. As there was no response from the side of the management the second-party approached the labour machinery by his application, dated the 22nd September 1997.

3. Disregarding all these facts the first-party has taken the stand that in response to the newspaper publication, dated the 8th September 1990, the second-party made an application but it was received after the stipulated date for which it was not taken into consideration. Subsequently, the management and the workers' Union entered into a settlement on 14-8-1992 and in terms of that settlement the second-party's application for absorption was taken into consideration and on



19-12-1992 the management sent a letter to the second-party by registered post asking him to report for duty on or before 15-1-1993 with clear stipulation that in case he did not report it would be presumed that he was not interested in employment with the first-party. A telegraphic message was also sent to the second-party on 29-12-1992 asking him to join by 15-1-1993. After receiving the telegram the second-party intimated his unwillingness to join in the Mill by sending his letter, dated the 16th January 1993 which was received by the management on 21-1-1993. In view of such reluctance on the part of the second-party the management did not take any further consideration and closed the matter. The management denies that the second-party had made any correspondence with it in between 17-6-1993 and 2-8-1997 as claimed by the second-party. It is also contended that there was undue delay in raising the dispute for which the reference is liable to be answered against the workman.

4. In terms of the reference, the following issues have been settled :—

### ISSUES

- (i) "Whether the action of management of Ballarpur Industries Ltd. by way of non-reinstatement to Shri Prabhat Kumar Das, Accounts Assistant of Sewa Paper Mill with effect from the 1st November 1987 in pursuance of amalgamation/merger Scheme-cum-Award passed by B.I.F.R. on 20-1-1991 is legal or justified ?
- (ii) If not, to what relief Shri Das is entitled ?"

5. The workman has examined himself as W.W. No. 1. The management has examined two witnesses. M.W. No. 1 is its Assistant Manager (Personnel) and M.W. No. 2 is its Human Resource Officer. Exts. 1 to 24 are marked on behalf of the workman and Exts. A to H on behalf of the management.

### FINDINGS

6. *Issue No. (i)*—There is no dispute that the management had invited the second-party to join his duties on or before 15-1-1993. But the real dispute is with regard to the alleged acceptance or non-acceptance of that offer. According to the workman, he was willing to join with the first-party but due to delayed delivery of the intimation letter/ telegram he could not get elbow room to come down to Jeypore and join duties in the Mill for which he had requested for extension of time but the management without sufficient reason refused to grant such extension. On the other hand, the management's stand is that on being intimated by the management to join on or before 15-1-1993 the workman sent a letter (marked Ext. H) expressing his unwillingness to join in the establishment of the first-party. When the said letter (marked Ext. H) was confronted to the workman he denied to have sent such a letter to the management. He also disowned the signature (marked X/1 for identification) to be his signature. Therefore, the management made a prayer to have the disputed document examined by a Handwriting Expert which was allowed by this Tribunal and the workman was called upon either to furnish admitted documents bearing his signature or to give his specimen signature for the purpose of expert examination. Thereafter, the workman did not appear before this Tribunal and his representing Lawyer took two adjournments stating that he was unable to contact the workman. At last none appeared from the side of the workman and the Tribunal proceeded with the trial in the absence of the workman. The management examined M.W. No. 2 who has adduced evidence to the effect that the disputed signature marked X/1 is the signature of the second-party workman which the witness claims to be acquainted with. A comparison of the disputed signature



with the signatures of the workman that appear in his claim statement gives an impression that the disputed signature is that of the workman. That apart, an adverse inference is to be drawn against the workman for his failure to co-operate with the Tribunal in the matter of examination of the disputed document by the Handwriting Expert. In the facts and circumstances, this Tribunal is of the view that Ext. H was sent to the management by the second-party intimating that he was no more interested to join as he was already engaged in another establishment getting more remuneration than what he would have got from the present management. However, before concluding on this point some other evidence adduced by the workman on the same matter need to be discussed.

7. It is the case of the workman that the invitation to join in the establishment of the management was not received by him in time for which he had to request the management to extend time for his joining. Ext. 4 is said to be a copy of the telegram that the workman had sent in reply to the telegram he had received from the management inviting him to join. Ext. 5 is a telegram which is in reply to the telegram marked Ext. 4. In Ext. 5 the management has intimated the workman that his prayer for extension of time was not granted and that he should join within the stipulated date. Therefore, it is to be believed that immediately after receiving the telegram from the management the second-party sent intimation to the former requesting for extension of time. Not only a telegraphic message but also a letter was addressed to the workman inviting him to join with the first-party. Ext. 6/Ext. C (both are xerox copy of management's letter No. 3326, dated the 19th December 1992) is the letter which was sent to the workman calling upon him to report for duties on or before 15-1-1993. The workman admits to have received this letter but he takes the plea that it was delivered to him on 14-1-1993. The workman alleges that though the letter is dated 19-12-1992, the management intentionally delayed its despatch which is evident from the postal envelope on which there is endorsement that the letter was sent by Registered Post vide RL No. 3573, dated the 30th December 1992 (The Postal Envelope is marked Ext. 8). It reflects that the letter was sent by Registered Post on 30-12-1992. It is quite probable that since there was delay in its despatch the management took precaution by sending a telegraphic message. According to the workman, on receipt of the letter dated the 19th December 1992, he sent an application for extension of time. According to him, Ext. 9 is a xerox copy of that application. This is disputed by the management. It is contended that no such letter as Ext. 9 was received by the management. The workman claims that he sent that application by Registered Post and according to him Ext. 11 is the postal receipt and Ext. 10 is the Acknowledgment Due (A.D.) with the endorsement of the management receiving that application on 21-1-1993. But, according to the management Ext. 10 is the postal A.D. in respect of the workman's letter which is marked Ext. H. It is very difficult to ascertain whether the A.D. marked Ext. 10 corresponds to Ext. 9 or Ext. H. But, Ext. 9 appears to be shrouded with doubtful circumstances and considering that Ext. H is found to be a letter signed by the workman, the workman's plea that Ext. 9 was sent to the management by Registered Post on 14-1-1993 appears to be unbelievable. What are the suspicious circumstances must find place in this Award.

In the claim statement it is not specifically stated that having received the letter dated the 19th December 1992 (Ext. 6) the workman sent an application on 14-1-1993 or 16-1-1993 requesting for extension of time. Though the workman has sent a letter declining to accept the offer to join, in his claim statement he is totally silent about that matter. The management in its written statement



clearly mentioned about the declining of the offer but the workman did not file any rejoinder denying that assertion. It was for the first time this stand was taken in the workman's affidavit evidence. In Para. 9 it is stated that on 14-1-1993 a letter was sent requesting for extension of joining period but in his cross-examination the workman says that the letter marked Ext. 9 is of the date 16-1-1993. He says that though the letter is dated the 16th January 1993 but in the affidavit it is wrongly stated as 14-1-1993. The bottom portion of Ext. 9 is little bit illegible. However, it is quite visible that the date "14-1-1993" is mentioned at the bottom of Ext. 9. This aspect does not appear to be very much material. But, there is another important feature which gives rise to a grave doubt. The workman's the then address is reflected at the top of Ext. 9 but his the then address given on Ext. 10, the postal A.D., is quite different from that of Ext. 9. Therefore, it is difficult to believe that the original of Ext. 9 was sent by registered post of which Ext. 10 is the A.D. On the other hand, the workman's address reflected on Ext. 10 tallies with that given in the disputed letter which is marked Ext. H. On the body of Ext. H there is an endorsement signifying that the letter was received in the management's office on 21-1-1993. Also on the body of the A.D. an employee of the management has endorsed to have received the registered letter on 21-1-1993. Therefore, there is reason to believe that the A.D. marked Ext. 10 can be co-related to Ext. H. Consequently, the workman's plea that he had sent the original of Ext. 9 by Registered Post is disproved. In the claim statement the workman has mentioned the facts and figures with letter numbers and their dates in details. It is highly doubtful that averment with regard to Ext. 9 should be missing from the contents of the claim statement. For all these reasons Ext. 9 is taken to be a created document.

8. The workman has further claimed that in between 17-6-1993 and 2-8-1997 he had sent several applications to the first-party with a prayer to give him a chance to join. He has exhibited Exts. 12 to 24. It is claimed that these applications were sent Under Certificate of Posting. The workman has also produced the Certificates of Posting which have been marked along with Ext. 12 series. It is not understood why the workman preferred to send these applications Under Certificate of Posting instead of sending them by Registered Post. Not a single of these letters has been sent by Registered Post. Therefore, no presumption can be raised to the effect that the workman had actually sent these letters and the management had received the same. These are self-serving documents and no reliance can be place on them.

9. The fact that by the time the management invited the workman to join in its establishment the workman was gainfully employed in some other establishment is evident from the workman's own halting admission. In his cross-examination he has admitted that he was in Patna from 1991 to 1993 and during that period he was doing a part-time job. In Ext. H which is held to be a letter signed by the workman it is clearly mentioned that he was already engaged in another establishment getting more remuneration than what he would have got from the first-party. It is suggested to but denied by the workman that he had been on full-time job till he raised the dispute in 1997. It is true that the workman raised the dispute by making an application to the local Labour Machinery on 22-9-1997. There is an unreasonable delay in raising the dispute. Perhaps to explain the delay the workman has taken the plea that during the intervening period he had made so may correspondences with the first-party but that plea is not found to be convincing. This unreasonable delay also provides strength to the management's stand that the workman expressed his unwillingness to join in its establishment.

Taking all these facts and circumstances into consideration it is concluded that it is not a case of refusal of reinstatement of the second-party in terms of the B.I.F.R. Award as well as the Settlement, dated the 14th August 1992. Rather, it is a case of refusal of the offer of reinstatement.

10. *Issue No. (ii)*—In view of the findings on issue No. (i), the second-party is not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH  
7-2-2012  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

RAGHUBIR DASH  
7-2-2012  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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By order of the Governor

T. K. PANDA

Under-Secretary to Government